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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,531	09/16/2003	Harry L. Tuller	MIT9983	3582
55740	7590	07/25/2007	EXAMINER	
GAUTHIER & CONNORS, LLP			LANDAU, MATTHEW C	
225 FRANKLIN STREET			ART UNIT	PAPER NUMBER
SUITE 2300			2815	
BOSTON, MA 02110				
MAIL DATE		DELIVERY MODE		
07/25/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/663,531	TULLER ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Matthew C. Landau	2815

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 May 2007.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-13 and 16-18 is/are pending in the application.  
 4a) Of the above claim(s) 1-10 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 11-13 and 16-18 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Election/Restrictions*

Claims 1-10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on October 27, 2004.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 11-13 and 16-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Sano et al. (US Pat. 6,664,565, hereinafter Sano).

Regarding claims 11 and 16, Figure 8 of Sano discloses a wide band gap semiconductor device (with a p-n junction) comprising: a substrate 301/305; an n-type ZnO layer 311 directly positioned on said substrate; and a p-type ZnO layer 315, said annealed p-type ZnO layer has increased conductivity and the p-type impurities are activated. The p-ZnO layer 315 can be considered to have increased conductivity compared to some arbitrary layer with less conductivity; for instance a layer having more crystal defects. The limitations “annealed” and “by removing hydrogen interstitials or intrinsic donors to thereby active impurity acceptors” are

merely product-by-process limitations that do not structurally distinguish the claimed invention over the prior art. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966.

Regarding claims 12 and 17, the limitation “wherein said acceptor-doped material is exposed to a hydrogen containing atmosphere” is merely a product-by-process limitation that does not structurally distinguish the claimed invention over the prior art.

Regarding claims 13 and 18, the limitation “wherein said acceptor-doped material is exposed to a non-hydrogen containing atmosphere” is merely a product-by-process limitation that does not structurally distinguish the claimed invention over the prior art.

#### ***Response to Arguments***

Applicant's arguments filed May 8, 2007 have been fully considered but they are not persuasive.

Applicant argues that “Sano et al. '565 describes forming high-temperature n-type and p-type layers but there are no discussions as to these layers being annealed”. It is first noted that Sano discloses the n-type layer is formed in a low-temperature process, and is then heat treated (col. 5, lines 34-40). This heat treatment can be considered an annealing process. Therefore, Sano explicitly discloses an annealed n-type ZnO layer. Regarding the claimed “annealed p-type ZnO layer”, the limitation “annealed” is merely a product-by-process limitation that does not

structurally distinguish the claimed invention over the prior art. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966. The burden is on Applicant to show that the product-by-process limitation necessarily results in a different structure. It is also noted that the p-type ZnO layer of Sano is formed using a high temperature growth process (col. 6, lines 5-14). The ZnO layer formed by this high temperature growth process would have a final structure equivalent to a layer formed using a low temperature growth followed by annealing. Therefore, whether or not the layer is annealed does not structurally distinguish the claimed “annealed p-type ZnO layer” over the p-ZnO layer of Sano. Applicant has not shown what, if any, structural differences (relative to the p-ZnO layer of Sano) result from the annealing process which forms the claimed “annealed p-type ZnO layer”.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew C. Landau whose telephone number is 571-272-1731. The examiner can normally be reached on 9:00AM - 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ken Parker can be reached on 571-272-2298. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Matthew C. Landau  
Primary Examiner  
Art Unit 2815  
